

2010 Unemployment Insurance (UI) Reform Bill (S.290)

June 7, 2010

CONTEXT:

- Failure to act this year will result in borrowing exceeding \$163 million by the end of 2011.
- The total cumulative impacts over the next 10 years from doing nothing meant:
 - \$81 million in interest payments
 - \$172 million in FUTA tax payments by ALL Vermont employers
 - Total borrowing exceeding \$257 million.
- A comprehensive solution needed to include a combination of tax increases and benefit reductions.
- This compromise gets the fund back in the black in 5 years.

EMPLOYER IMPACTS: (Effective January 1, 2011)

Taxable wage: Increase the taxable wage base (TWB), the basis used for figuring an employer's UI taxes, from the current \$10,000 to \$13,000 on 1/1/2011 and to \$16,000 on 1/1/2012.

- TWB will index upward annually by overall wage growth after the trust fund balance becomes positive, projected to be 2015.
- TWB will drop by \$2,000 upon return to tax rate schedule III and another \$2,000 at schedule I.

Fines and penalties will be increased from \$35 to \$100 if employer fails to file timely reports.

- In addition, a fine of up to \$5,000 will be assessed on employers who misclassify employees. (VDOL will be conducting public education.)
- An employer's account will remain charged for overpaid unemployment benefits if the overpayment resulted from employer's failure to respond to requested forms to determine workers eligibility AND benefits are later rescinded for whatever reason.

BENEFIT IMPACTS: (Varying effective dates in 2011 and 2012)

Maximum weekly benefit amount remains frozen at \$425 while we are borrowing (current law).

- Increases will resume when the fund balance is positive, projected to be July 2015.
- To help make up for the lost increases, the maximum amount will become 57% of the overall average annual wage once we return to tax rate schedule III.
- NOTE: In 2008, only 23% of claimants received maximum amount; average was \$312 per week.

Variable total benefit amount will be changed for new claims effective after July 1, 2011.

- Maximum amount will be 46% of the wages claimant earned in the "base period" or 26 times the weekly benefit amount, whichever is less.
- NOTE: A worker who works a full year, every year, will not be affected by this change.

Being fired for misconduct: Penalty weeks are expanded from 6-12 to 6-15. These are weeks where UI benefits are delayed but the fired employee can still collect UI after the delay period.

- Findings of misconduct will result in a cap of 23 weeks of benefits.
- NOTES: Misconduct is currently defined as "willful and culpable neglect of an employer's interest," which the employer has the burden to demonstrate. It is NOT a single event of showing up late, but rather repeated negative behavior, usually with warning by the employer. There are three levels of appeals for a finding of misconduct. A lawyer is not required.

Expanded Definition of gross misconduct: findings will prohibit the use of wages earned from firing employer for calculation of claimant's weekly benefit amount.

- Examples of gross misconduct include but are not limited to: theft; fraud; intoxication; intentional serious damage to property; intentional infliction of personal injury; any conduct that constitutes a felony; or repeated incidents after written warning of either of the following: unprovoked insubordination or public use of profanity.

Severance pay will be disqualifying, meaning a person can not draw unemployment at the same time they have received severance pay. They can still collect the full 26 weeks of UI but only after the severance is used

One week waiting period will be reinstated at the start of new claims established on or after July 1, 2012. A person claiming UI benefits will have to wait one week after they are laid off to collect. They will still get their maximum entitlement, just delayed by 1 week.

- The waiting period sunsets in 2017 or when the trust fund returns to a positive balance, whichever is later.
- NOTES: In most cases, workers are paid in arrears, meaning they are getting their last pay check during the first week of being unemployed. Studies have shown that a one-week waiting period positively impacts return-to-work rates. Vermont is one of only 12 states that did not have a waiting period.

Exempted part time earnings while collecting UI benefits will change for new claims established on or after July 1, 2012.

- New system will exempt \$40.00 or 30% of wages (whichever is greater) of wages earned.
- Example: A person who was filing and getting \$400 in unemployment benefits and then finds part-time work and earns \$200, will receive \$260 in unemployment PLUS the \$200 earned from working.
- Advantages to new system include: smoother transition to full-time employment; removing the existing cliff; and greater incentive for claimant to accept full-time work rather than limiting to part-time.

OTHER PROVISIONS: Implemented January 1, 2011

Reporting: The Commissioner of VDOL will expand annual reporting beyond the Governor to the committees of jurisdiction.

- The reports will be specific as to the health of the fund including any recommendations for action to ensure the continued health of the fund.
- There will also be a comprehensive review in 2013 on the progress of this legislation.

Trust fund projections capability: VDOL will work with the Joint Fiscal Office to utilize USDOL modeling capabilities. Presently, only VDOL has access to this capability.

Self employment assistance: Create a committee to study the possibility of implementing a Self Employment Assistance (SEA) program for UI claimants.

- Presently, someone receiving UI benefits must be “able and available” to accept a job. Typically folks starting a new business are working 40+ hours a week getting their business started. Therefore they are not “able and available” to accept a job offer with an employer making them ineligible to receive UI benefits. There are circumstances where someone may be starting a business in the evenings or weekends so they *are* “able and available” for work. In those cases they *can* collect UI benefits as long as they are willing to accept a reasonable job offer.
- Under this program, Federal law allows states to have up to 5% of UI claimants collect UI while starting a business. It essentially waives the “able and available” requirement for those receiving this assistance. This may be a very good idea for Vermont. However, there are issues with federal law for folks participating in the Self Employment Assistance program and collecting federally extended UI benefits. This needs to be examined as well as requirements to participate in entrepreneurial training and other measures of successful progress in starting a business.

Enhanced assistance to UI claimants: These provisions codify in law enhanced efforts by VDOL to help assist unemployment claimants in getting back to work, including making these services a priority in regional offices.

- VDOL shall implement re-employment services in regional offices utilizing available grants or other resources. Further, claimants will be required to participate in re-employment services when directed.

Technical corrections: Additional technical corrections are needed to bring UI law in to compliance, access additional federal funds and make the statute more understandable.

- Fix the “training language” passed last year to enable draw down of the remaining \$9.3 million in ARRA UI funding.
- Make changes to the make-up of the State Apprenticeship Council to comply with new Federal regulations.
- Change the income tax withholding formula in the UI statute to be 24% of a claimant’s federal withholding. This is in keeping with the practice of VDOL for the last 8 years.
- Rename and re-title sections of the bill to make them clearer to the reader.